

PALMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA

SUBDIVISION AGREEMENT

Subdivision: Cedar Park Phase 1

Zoning of Subdivision:

THE CITY OF PALMER (hereafter the City) a municipal corporation, and Cedar Park Properties, LLC, (hereafter the Developer) enter into the following agreement this _____ day of _____, 2022.

I, Connie Yoshimura, execute this agreement on behalf of the Developer. It is understood that the Developer is an Alaska limited liability company and that the persons who executed the agreement on behalf of the Developer do so in the capacity of authorized members and each warrants that he and she have authority to execute this agreement on behalf of the Developer. The parties to this agreement shall accept notices at the following addresses and telephone numbers:

<u>Developer</u>	<u>Municipality</u>
Cedar Park Properties, LLC 561 E 36 th Ave, Suite 200 Anchorage, AK 99503 (907) 229-2703	City of Palmer 231 W. Evergreen Ave. Palmer, Alaska 99645 (907) 745-3271

The real property which is the subject of this agreement (hereafter the subdivision) is located in the City of Palmer, Third Judicial District, State of Alaska and is described as follows:

Cedar Park Phase 1 Block 1, Lot 1-3 / Block 2, Lot 1-8 / Block 3, Lot 1-10/ Block 7, Lot 1-10
(This legal description is or may be taken from the preliminary plat for the subdivision and may be subject to change after the recording of the final plat. Developer agrees that no change shall be detrimental to the City in enforcing the terms of this Agreement.)

The Developer seeks the City's non-objection to a final plat for the subdivision pursuant to Title 16 of the City of Palmer Municipal Code and Title 16 of the Matanuska-Susitna Borough Code. In consideration of the City of Palmer's non-objection to a final plat for the subdivision, the Developer agrees to construct and install the improvements described below in accordance with all the terms, covenants and conditions of this agreement.

The Developer shall construct and install the following improvements:

<input checked="" type="checkbox"/> Street & Paving	<input type="checkbox"/> Sidewalk	<input type="checkbox"/> Curb and gutter
<input type="checkbox"/> Storm Drain	<input checked="" type="checkbox"/> Drainage	<input type="checkbox"/> Walkway
<input checked="" type="checkbox"/> *SM Sanitary Sewer	<input checked="" type="checkbox"/> *SM Water	<input checked="" type="checkbox"/> Telephone
<input checked="" type="checkbox"/> Electrical	<input checked="" type="checkbox"/> Monumentation	<input checked="" type="checkbox"/> Street Signs
<input checked="" type="checkbox"/> Traffic Control Devices	<input checked="" type="checkbox"/> Street Lighting	<input checked="" type="checkbox"/> Natural Gas

The Developer estimates the cost of the improvements to be **\$ 1,048,785.00**

Revised Estimates of Cost of All Improvements

<u>Estimate</u>	<u>Cost</u>
<u>Roadway</u>	<u>\$623,435</u>
<u>Drainage & Waterways</u>	<u>\$108,350</u>
<u>Lighting</u>	<u>\$241,154</u>
<u>Natural Gas</u>	<u>\$75,846</u>

Developer acknowledges that although the City requires construction and installation of these items, that the Developer is solely liable for the cost thereof.

ARTICLE I

GENERAL PROVISIONS

1.01 Application of Article.

Unless this agreement expressly provides otherwise, all provisions of this article apply to every part of this agreement.

1.02 Permits, Laws and Taxes.

The Developer shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this agreement. All actions taken by the Developer under this agreement shall comply with all applicable statutes, ordinances, rules and regulations. The Developer shall pay all taxes pertaining to its performance under this agreement.

1.03 Relationship of Parties.

Neither by entering into this agreement, nor by doing any act hereunder, may the Developer or any contractor or subcontractor or other agent of the Developer be deemed an agent, employee or partner of the City, or otherwise associated with the City other than, in the case of the Developer, as a party to this agreement. The Developer and its contractors and subcontractors shall not represent themselves to be agents, employees, or partners of the City, or otherwise associated with the City other than, in the case of the Developer, as a party to this agreement. The Developer shall notify all its contractors and subcontractors of the provisions of this section. The City is not responsible for the compliance of the Developer's contractors or subcontractors.

1.04 Engineer's Relation to City.

An engineer retained by the Developer to perform work under this agreement shall not be deemed an agent, employee, partner or contractor of the City, or otherwise associated with the City.

1.05 Developer's Responsibility.

The Developer shall be solely responsible for the faithful performance of all terms, covenants and conditions of this agreement notwithstanding the Developer's delegation to another of the actual performance of any term, covenant or condition hereof.

1.06 Allocation of Liability.

The Developer shall indemnify (to include paying all costs of defense including without limitation actual attorney's fees) and hold the City harmless from any claim, action or demand arising from any act or omission, related to the interpretation of this agreement or any actions or approvals thereunder, in whole or in part, of the Developer, his agents, employees or contractors.

The liability assumed by the Developer pursuant to this section includes but is not limited to claims for labor and materials furnished for the construction of the improvements. The liability assumed by the Developer under this agreement shall not be extinguished by subsequent transfers of the real property by the Developer to third party purchasers.

1.07 Disclaimer of Warranty.

Notwithstanding this agreement or any action taken by any person hereunder, neither the City nor any City officer, agent or employee warrants or represents the fitness, suitability, or merchantability of any property, plan, design, material, workmanship or structure for any purpose.

1.08 Non-Discrimination.

- A. In performing its obligations under this agreement, the Developer shall not discriminate against any person on the basis of race, creed, color, national origin, sex, marital status, or age, or on any other basis prohibited by law.
- B. In selling or leasing property or improvements in the subdivision, the Developer shall not discriminate against any person on the basis of race, creed, color, national origin, sex, marital status, or age, or on any other basis prohibited by law.

1.09 Cost of Documents.

All plans, reports, drawings, electronic data, and other documents that this agreement requires the Developer to provide the City, including the drafting of this agreement, shall be furnished at the Developer's expense.

1.10 Public Utilities.

- A. Any public utility service contemplated by this agreement need be provided only to areas where the service is not prohibited by the Regulatory Commission of Alaska and applicable law. All utility service shall conform to the rules, regulations and tariffs of the Regulatory Commission of Alaska.
- B. If the Regulatory Commission of Alaska disallows any utility service by the City following the execution of this agreement, the provision of the disallowed service shall be deleted from the requirements under this agreement without affecting any other part hereof. The disallowance shall not be grounds for any claim, action or demand against the City.
- C. As set forth in Section 2.09(E) of this agreement, to the extent the Developer fails to comply with the septic agreement terms, as set forth in Exhibit B, then Developer shall be required to connect to the public utility system at its sole cost and expense.

1.11 Time of the Essence.

Unless otherwise expressly provided herein, time is of the essence of each and every term, covenant and condition of this agreement.

1.12 Assignments.

- A. Except insofar as subsection B of this section specifically permits assignments, any assignment by the Developer of its interest in any part of this agreement or any delegation of duties under this agreement shall be void, and any attempt by the Developer to assign any part of its interest or delegate any duty under this agreement shall constitute a default enttling the City to invoke any remedy available to it under Section 1.13 or at law or in equity.
- B. The Developer may assign its interest or delegate its duties under this contract:
 - 1. As expressly permitted in writing by the City.
 - 2. To contractors and subcontractors, subject to Section 1.05.
 - 3. As expressly permitted in writing by the City.

1.13 Default: City's Remedies.

- A. The City may declare the Developer to be in default:
 - 1. If the Developer is adjudged a bankrupt, makes a general assignment for the benefit of creditors, suffers a receiver to be appointed on account of insolvency, takes advantage of any law for the benefit of insolvent debtors; or
 - 2. If the Developer has failed in any measurable way to perform its obligations under this agreement provided the City gives the Developer notice of the failure to perform and the Developer fails to correct the failure within thirty (30) days of receiving the notice; or, if the failure requires more than thirty (30) days to cure, the Developer fails within thirty (30) days of receiving the notice to commence and proceed with diligence to cure the failure.
- B. Upon a declaration of default the City may do any one or more of the following:
 - 1. Terminate the agreement without liability for any obligation maturing subsequent to the date of the termination;
 - 2. Perform any act required of the Developer under this agreement, including constructing all or any part of the improvements, after giving seven (7) days notice in writing to the Developer. The Developer shall be liable to the City for any costs thus incurred. The City may deduct any costs thus

Incurred from any payments then or thereafter due the Developer from the City, whether under this agreement or otherwise.

3. Exercise its rights under any performance or warranty guaranty securing the Developer's obligations under this agreement.
4. Pursue any appropriate judicial remedy including but not limited to an action for injunction and civil penalties pursuant to Title 16 of the Palmer Municipal Code and Title 27 of Matanuska-Susitna Borough Code.

1.14 Non-Waiver.

The failure of the City at any time to enforce a provision of this agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this agreement or any part hereof, or the right of the City thereafter to enforce each and every provision hereof.

1.15 Interpretation.

- A. Each document incorporated by reference herein is an essential part of this agreement and any requirement, duty or obligation stated in one document is as binding as if stated in all. All documents shall be construed to operate in a complementary manner and to provide for a complete project.
- B. If the terms of any of the documents and amendments thereto comprising this agreement conflict, the conflict shall be resolved by giving the conflicting documents and amendments thereto the following order of preference:
 1. Documents or sections titled "Special Provisions."
 2. Article II of this agreement titled "Improvement Construction Standards and Procedure," and Article III of this agreement titled "Acceptance of Improvements."
 3. Article I of this agreement titled "General Provisions."
 4. Any other document incorporated herein by reference.

1.16 Effect of Standard Specifications and Development Standards.

The Standard Specifications and Development Standards of the City of Palmer in effect at the time this agreement is executed and incorporated by reference herein for performance under this agreement except where this agreement specifically provides otherwise. Anything to the contrary in the section notwithstanding, all performance by Developer shall be done in a good and workmanlike manner with the warranty that all work and improvements (to include the engineering thereon) are fit for the ordinary purposes for which such work and improvements are used.

1.17 Amendment.

The parties may amend this agreement only by written agreement, signed by the party to be bound, which shall be attached as an appendix hereto.

1.18 Jurisdiction: Choice of Law.

Any civil action arising from this agreement shall be brought and tried in the Superior Court for the Third Judicial District of the State of Alaska at Palmer. The law of the State of Alaska, the City of Palmer, and the Matanuska Susitna Borough shall govern the rights and duties of the parties under this agreement.

1.19 Severability.

Any provision of this agreement that may be declared invalid or otherwise unenforceable by a court of competent jurisdiction shall be ineffective to the extent of such invalidity without invalidating the remaining provisions of the agreement.

1.20 Integration.

This instrument and any writings incorporated by reference herein embody the entire agreement of the parties. This agreement shall supersede all previous communications, representations or agreements, whether oral or written, between the parties hereto concerning the subject matter of this agreement.

1.21 Responsibility for Claims.

In addition to Developer's duties contained in §1.06 above, Developer shall indemnify (to include pay all costs of defense including without limitation actual attorney's fees) and save harmless the City, its officers and employees, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons or property on account of or in consequence of any neglect in safeguarding the work; or through the use of unacceptable materials in constructing the work; or because of any act of omission, neglect, or misconduct of said Developer; or from any claims or amounts arising or recovered under the "Worker's Compensation Act," or any other law, order, or decree; and in the event of suit or suits, action or actions, claim or claims for injuries or damages Developer's surety shall be held until the aforesaid shall have been settled and suitable evidence to that effect furnished to the City.

1.22 No Contract Rights In Third Parties.

It is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create in the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this

agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this agreement.

1.23 Definitions.

Unless this agreement expressly provides otherwise, the following definitions shall apply herein:

- A. "Improvements" means all work the Developer is required to perform by this agreement.
- B. "Municipal improvements" means improvements to be dedicated to the City, the Matanuska-Susitna Borough, or to the public, or improvements to be operated and controlled by the City.
- C. "City," for the purposes of administering this agreement, means the City Manager, or his designee.
- D. "Acceptance" by the City means a determination that an improvement meets municipal construction standards and does not refer to accepting a dedication of the improvement by the Developer.

1.24 Developer's Duties Run with the Land; Memorandum of Agreement.

The duties of the developer run with the land for the benefit of the City and to the extent the Developer has completed its performance under this agreement, the following provisions will survive any termination of this agreement: Sections 1.06, 1.10, 1.16, 1.18, 1.21, 1.22, and 1.24. Upon executing this agreement, the parties shall execute and the City may record the Memorandum of Subdivision Agreement.

ARTICLE II

IMPROVEMENT CONSTRUCTION STANDARDS AND PROCEDURE

2.01 Recording of Final Plat.

The City will provide its non-objection to the final plat for the subdivision within a reasonable time after the Developer has submitted and the City has approved the performance guaranty required by Section 2.02 and the Developer has complied fully with §2.08 through §2.14.

2.02 Performance Guaranty.

- A. The Developer shall guaranty for the sole benefit of the City that the Developer will perform all of its obligations under this agreement. The guaranty shall be in one of the forms specified by Sections 2.03, 2.04, and 2.05. During the term of this agreement the Developer may, with the written consent of the City, substitute for a performance guaranty submitted under this section another guaranty in the required amount and in one of the forms specified by Sections 2.03, 2.04, and 2.05.
- B. Amount of guaranty:
 - 1. The guaranty shall be in an amount equal to 100% of the estimated cost of all improvements, plus the applicable Overrun Allowance. The Developer shall submit for the City's approval a cost estimate for each improvement required by this agreement, a copy of which is attached hereto as Exhibit A. The estimated cost of all improvements shall be the sum of the approved estimated cost of constructing each improvement, plus an overrun allowance upon that sum fixed of 7% for a total Performance Guaranty of 107% of the estimated cost of all improvements.
 - 2. If the City finds that increases in construction costs between the time the City approves the estimated improvement costs under paragraph 1 of this subsection and the time of the improvements are completed, have rendered the approved estimated improvement costs unreasonably low; or, if said costs are unreasonably low for other substantial cause, the City may require, in its sole discretion, that the Developer to increase the performance guaranty to an amount equal to an approved estimated cost of all improvements based upon current construction costs.
- C. If the Developer is not in default under this agreement, the City may, in its sole discretion, allow a reduction in the amount of the performance guaranty, or the amount secured thereby, not exceeding the difference between the estimated cost of all improvements and the current estimated cost of the work remaining to be performed under this agreement; provided, however, that amount of the

performance guaranty, or the amount secured thereby, always shall be greater than or equal to the amount of the warranty guaranty required by Section 3.08.

- D. As soon as one of the following occurs, the City shall release any performance guaranty that has not been used or encumbered under Section 1.13:
1. The final acceptance of all improvements and the posting of the Developer's warranty as provided in Section 3.07;
 2. The expiration of the warranty period as provided in Section 3.08 A.

2.03 Bonds.

The Developer and / or contractor may provide a performance bond and a labor and material bond from a company qualified by law to act as a surety in the State of Alaska. The bond shall be in a form approved by the City. The bond shall name the City as the sole obligee and the Developer and / or the contractor as the principal. The surety must be rated by A.M. Best as an A or B surety.

2.04 Escrow.

The Developer may deposit cash in an escrow with a bank qualified by law to do business in the State of Alaska. The disbursement of the escrowed funds shall be governed by an escrow agreement in a form approved by the City.

2.05 Irrevocable Letter of Credit.

The Developer may cause a bank qualified by law to do business in the State of Alaska to issue an irrevocable letter of credit or proof of loan commitment agreement to the City as beneficiary. The letter of credit or loan commitment agreement shall be in a form approved by the City.

2.06 Reserved.

2.07 Prerequisites to Construction.

The Developer shall not obtain permits for the construction of improvements or commence the construction of improvements until the requirements of Sections 2.08 through 2.14 have been met and the City has delivered to the Developer the Notice to Proceed.

2.08 Engineer.

- A. The Developer shall retain an engineer registered as a professional engineer under the laws of the State of Alaska to design and administer the construction of the improvements, including preparing plans and specifications, inspecting and

controlling the quality of the work, and preparing as-built data. The Engineer shall perform the work described herein in accordance with the City's recommended procedures for consulting engineers.

- B. The Developer shall inform the City of the name and mailing address of the engineer he has retained to perform the duties described in subsection A of this section and agrees that notice to the engineer at the address so specified regarding the performance of such duties shall constitute notice to the Developer. The Developer shall promptly inform the City of any change in the information required under this subsection.

2.09 Plans and Specifications.

- A. The Developer shall submit to the City, in such form as the City may specify, all plans and specifications pertaining to the construction of the improvements.
- B. The Developer shall submit to the City proof that he has retained an engineer to perform the duties described in Section 2.08A.
- C. If the City requires soil tests or other tests pertaining to the design of improvements, which may be requested in the sole discretion of the City, the Developer shall submit reports of the test results with the plans and specifications.
- D. The City, either in-house or through retained professionals, shall approve the plans and specifications as submitted, or timely indicate to the Developer any modifications that are needed to secure approval.
- E. The Developer agrees to regular maintenance of the on-site water and wastewater systems and to defend and indemnify the City for any costs or damages related to the on-site wastewater system, and the failure to comply may result in the City asserting any and all legal and equitable remedies available.

2.10 Project Cost and Deposit.

- A. The Developer shall pay the City's actual cost associated with the work the Developer performs under this agreement. The City's cost shall include but is not limited to: drafting the agreement, administering the agreement, and general oversight in the manner deemed appropriate by the City.
- B. Upon execution of this agreement the Developer shall pay a deposit toward the City's costs based upon the estimated cost of the improvements to be constructed under this agreement as follows:

<u>Estimated cost</u>	<u>Deposit</u>
\$10,000 or less	\$300.00
\$10,000.01 to \$50,000.00	4% of estimated cost

\$50,000.01 to \$150,000.00	3% of estimated cost
\$150,000.01 to \$500,000.00	2.5% of estimated cost
\$500,000.01 or more	\$13,000.00

The deposit shall be paid in accordance with the following schedule:

1. upon application for the subdivision agreement: \$300.00;
 2. upon submission of plans for the improvements: 0.5% of the estimated cost of the improvements or \$150.00, whichever is greater;
 3. prior to issuance of the Notice to Proceed: the balance of the deposit.
- C. If at any time the City finds its costs exceed the total deposit received, the City may periodically bill and the Developer shall pay for those actual incurred costs in excess of the amount of the deposit. After the City finds the improvements meet City specifications, it shall determine its costs to date. If the costs plus any deposit required under subsection D of this section exceed the total deposits received, the Developer shall pay the balance to the City prior to final acceptance of the improvements. If the total deposits exceed the costs, the City shall refund the balance, less any deposit required under subsection D of this section, to the Developer.
- D. Prior to acceptance of completion by the City of the undertaking by the Developer, the Developer shall also pay a deposit toward the City's costs incurred during the warranty period under the subdivision agreement in an amount determined by the superintendent of public works, but not exceeding \$2,000.00. This deposit may be retained from any balance remaining in the deposit paid under subsection B of this section. At the end of the warranty period, the City shall determine its costs during that period. If the costs incurred by the City exceed the amount of the deposit, the Developer shall pay the remaining balance to the City within fifteen days of receiving notice for payment. If the deposit exceeds the costs, the City shall refund any remaining balance to the Developer upon receipt of notice from the Developer. For purposes of clarification, the cost deposit under this section is in addition to the warranty period payment set forth in Section 3.08.

2.11 Quality Control Program.

- A. The Developer shall submit to the City, in such form as the City may specify, a quality control program for the construction of the improvements.
- B. The quality control program shall provide sufficient inspection and test procedures to determine compliance with all applicable plans, specifications, and safety requirements. The program shall include at least the following:
 1. The frequency and type of all tests to be performed.

2. A list of all persons who will perform tests and inspections.
3. Procedures for coordinating testing and inspections with the City, and for providing advance notice to the City of all inspections and tests which the City shall witness.
4. Procedures for reporting quality control activities including discoveries of deficiencies in the work.

2.12 Work Schedule.

- A. The Developer shall submit to the City, in such form as the City may specify, a work schedule.
- B. The work schedule shall include a progress chart of a suitable scale indicating the approximate percentage of work scheduled for completion at any given time. For each improvement the schedule shall indicate starting and completion dates for the following:
 1. Clearing, grubbing, removing of overburden.
 2. Excavation, installation and backfill and compaction for each utility to be installed by the Developer.
 3. Excavation, backfill and compaction for street facilities other than paving.
 4. Curb, gutter, paving, etc. in accordance with published design documents.

2.13 Materials.

- A. The Developer shall submit, in such form as the City may specify, detailed information concerning all materials and equipment it proposes to incorporate into an improvement.
- B. Upon the City's request, the Developer shall submit samples of materials or equipment it proposes to incorporate into an improvement.

2.14 Liability Insurance.

The Developer shall provide adequate proof that it has acquired the insurance required under the City's standard specifications (Division 10, Article 6.9 of the 2018 CoP Standard Specifications) in effect at the time of the execution of this agreement, in the form prescribed in those standard specifications, or, if the Developer has engaged a prime contractor to perform the work under this agreement, adequate proof that the prime contractor has acquired such insurance, naming the Developer as an additional insured.

2.15 General Standard of Workmanship.

- A. The Developer shall construct all improvements in accordance with plans, specifications and contracts approved by the City and with the terms, covenants and conditions of this agreement. The Developer shall not incorporate any material or equipment into an improvement unless the City has approved its use. Unless the City specifically agrees otherwise in writing, all materials, supplies and equipment incorporated into an improvement shall be new.
- B. If in the course of construction conditions appear that in the exercise of reasonable engineering judgment require a modification of or substitution for approved materials, equipment, plans, specifications, or contracts to meet a higher standard of performance, the Developer shall give written notice thereof to the City and, subject to the City's prior approval, make the modification or substitution.
- C. The Developer shall construct all facilities in the subdivision not otherwise subject to this agreement in accordance with applicable statutes, ordinances and specifications.

2.16 Placement of Utilities.

The Developer shall place all utilities underground except where this requirement is specifically waived by the express consent of the City.

2.17 Work In Right-of-Way.

The Developer shall comply with all ordinances and secure all necessary permits and authorizations pertaining to work in public rights-of-way. The Developer shall coordinate and supervise the installation and construction of all utility improvements, including those not otherwise covered by this agreement, in a manner that will prevent delays in City construction or other damage to the City, and that will permit the City properly to schedule work that it will perform.

2.18 Surveyor.

All surveys required for the completion of improvement under this agreement shall be made by a person registered as a professional land surveyor under the laws of the State of Alaska.

2.19 Required Reporting.

A. Quality control.

1. The Developer shall submit to the City, regularly and promptly, written reports describing the results of all tests and inspections required by the quality control program, and all other tests and inspections which the Developer may make.
2. The Developer shall coordinate testing and inspections with the City and provide reasonable advance notice to the City of all tests and inspections which the City shall witness, as required by the approved quality control program.

B. Construction progress.

1. At such intervals as the City may require, the Developer shall enter on the approved work schedule progress chart the actual work progress to date, and immediately forward two (2) copies of the marked progress chart to the City.
2. If actual progress indicates that the Developer will not perform the work as scheduled, the Developer shall prepare and submit a revised schedule for the City's approval.
3. In addition to any other notice that this agreement may require, the Developer shall give the City reasonable notice prior to commencing each of the following:
 - a. Clearing and grubbing;
 - b. Completion of excavation;
 - c. Installation of each utility, placement of backfill, or classified backfill;
 - d. First concrete pour;
 - e. First placement of leveling course;
 - f. First placement of asphalt;

- g. First placement of seal coat.
- C. Surveys. The Developer shall furnish promptly to the City copies of all surveys required for the completion of the improvements.
- D. Express or implied approval by the City of any report or inspection shall not authorize any deviation from approved plans and specifications or from the terms of this agreement.

2.20 Progress Payments.

The Developer shall pay his contractors all contract progress payments when due.

2.21 Surveillance.

- A. The City may monitor the progress of the work and the Developer's compliance with this agreement and perform any inspection or test which it deems necessary to determine whether the work conforms to this agreement.
- B. If the Developer fails to notify the City of inspections, tests and construction progress as required by Section 2.19, the City may require, at the Developer's expense, retesting, exposure or previous stages of construction, or any other steps which the City deems necessary to determine whether the work conforms to this agreement.
- C. Any monitoring, tests or inspections that the City orders or performs pursuant to this section are solely for the benefit of the City. The City does not undertake to test or inspect the work for the benefit of the Developer or any other person.

2.22 Stop Work Orders.

- A. If the City determines there is a substantial likelihood that the Developer will fail to comply, or if the Developer does fail to comply, with this agreement, the City may stop all further construction of all or some of the improvements by posting a stop work order at the site of the nonconforming construction and notifying the Developer or its engineer of the order. In this section, "nonconforming construction" includes, by way of example and not by way of limitation, construction work for which the Developer failed to strictly comply with the requirements contained in §2.19 or §2.21, even though the constructed work passes the tests.
- B. A stop work order shall remain in effect until the City approves:
 - 1. Arrangements made by the Developer to remedy the nonconformity; and

2. Assurances by the Developer that future nonconformities will not occur.
- C. The issuance of stop work order under this section is solely for the benefit of the City. The City does not undertake to supervise the work for the benefit of the Developer or any other person. No suspension of work under this section shall be ground for an action or claim against the City, except for an extension of time to perform the work, and the Developer shall be solely liable for any claims made by any contractor, subcontractor, or agent, with respect to a stop work order.
- D. The Developer shall include in all contracts for work to be performed or materials to be used under this agreement the following provision:

The City of Palmer, pursuant to a subdivision agreement on file with the City Clerk and incorporated herein by reference, has the authority to inspect all work or materials under this contract, and to stop work in the event that the work performed under this contract fails to comply with any provision of the subdivision agreement. In the event that a stop work order is issued by the City of Palmer, the contractor immediately shall cease all work, or all affected work at the City's discretion, and await further instructions from the Developer.

2.23 Access.

The City shall have access to all parts of the subdivision necessary or convenient for monitoring the Developer's performance, inspecting, surveying, testing or performing any of the work.

2.24 Maintenance.

- A. Until the City accepts the improvements; the Developer shall maintain all existing roads within the subdivision that are necessary for access to property not owned by the Developer. For the purposes of this subsection, existing roads are roads that physically exist, as distinguished from mere rights-of-way dedicated for road purposes. The maintenance required by this subsection includes repair, replacement or reconstruction, cleaning, effective dust control measures, snow removal and similar activities.
- B. The Developer shall repair or pay the cost of repairing damage to any improvement that occurs prior to the City's acceptance of the improvements. The Developer shall give reasonable notice to the City before undertaking the repair of the damaged improvement.

2.25 Operation of Improvements Prior to Acceptance.

- A. Before the City accepts the improvements, the City may enter upon, inspect, control and operate any improvement if the City determines that such action is necessary to protect the public health, safety and welfare.
- B. The action described in subsection A of this section shall not constitute the acceptance of any improvement by the City, nor shall the action affect in any way the Developer's warranty under this agreement.

2.26 Time.

- A. All improvements required by this agreement shall be completed within two (2) years of the date of execution hereof.
- B. The Developer shall begin actual construction of improvements required under this agreement in accord with the Developer's work schedule as approved by the City.
- C. If the Developer is delayed by an action or omission of the City not otherwise authorized under this agreement, or by changes ordered in the work, labor disputes, fire, delays in transportation, casualties, or other cause which the City in its discretion determines to be adequate to justify the delay, the time of completion of construction under this agreement may be extended for a reasonable time which shall be determined by the City. No extension shall be granted unless the Developer gives notice in writing to the City within ten (10) days after the occurrence of the cause for delay. In the case of a continuing delay, only one notice is required.

ARTICLE III

ACCEPTANCE OF IMPROVEMENTS

3.01 Prerequisites to Acceptance.

The City shall not accept the Improvements until all the requirements of Sections 3.02 through 3.05 have been met.

3.02 Monuments and As-Built Drawings.

- A. Upon completing the improvements, the Developer shall replace any disturbed or removed lot corners and primary monuments and shall install monuments on the centerline of rights-of-way of all required paved streets with 5/8" x 18" rebar and alcap at points of curvature, ends of curvature, angle points, intersections, and centers of cul-de-sacs in accordance with City standards and good professional practices.
- B. Prior to the final inspection and certification under Section 3.05E, the Developer shall provide to the City one acceptable set of reproducible mylar as-built drawings for each improvement and a copy of acceptable electronic data of each improvement drawing in an AutoCad .DWG or .DWF or other format as specified by the City on media as specified by the City. The as-built drawings and electronic information shall be certified by a professional engineer registered under the laws of the State of Alaska to accurately represent the improvements as actually constructed.

3.03 Certificate of Compliance.

The Developer shall furnish the City with a certificate of compliance for the work performed under this agreement, in the form prescribed by the standard specifications of the City in effect at the time of execution of this agreement.

3.04 Conveyance of Easements and Rights-of-Way to Municipality.

The Developer shall convey to the City, the Matanuska-Susitna Borough or the public any easement, right-of-way or other property interest necessary to allow the City access to the municipal improvements to operate, maintain, or repair the municipal improvements. The Developer may condition the conveyance upon the City's acceptance of the improvements.

3.05 Inspection.

- A. Upon receiving notice that the Developer has completed the improvements, the City shall schedule inspections of the improvements. The City may inspect all improvements, and any other work in dedicated easements or rights-of-way, and

any additional inspection needed in the City's determination to accept the improvements.

- B. The City shall inform the Developer in writing of any deficiencies in the work found in the course of its inspection.
- C. At its own expense, the Developer shall correct all deficiencies found by inspections under subsections A of this section. Upon receiving notice that the deficiencies have been corrected, the City shall re-inspect the improvements.
- D. The City may continue to re-inspect an improvement until the City is satisfied that the Developer has corrected all deficiencies in the improvement.
- E. After a final inspection has revealed that all improvements and other work in dedicated easements and rights-of-way meet City standards, and the Developer has furnished the as-built drawings and electronic data required by Section 3.02B, the City shall notify the Developer that all improvements have been accepted.

3.06 Consequences of Acceptance of Improvements.

- A. The City's final acceptance of the municipal improvements constitutes a grant to the City of all the Developer's right, title and interest in and to the municipal improvements.
- B. By accepting the municipal improvements under this agreement, the City shall not be required to maintain such improvements, as set forth in AS 29.71.020.

3.07 Developer's Warranty.

- A. The Developer shall warrant the design, construction materials and workmanship of the improvements against any failure or defect in design, construction, material or workmanship discovered for two (2) years from the date the City notifies the Developer of the acceptance of the improvements. This warranty shall cover all direct and indirect costs of repair or replacement, and damage to the property, improvements or facilities of the City, or any other person, caused by such failure or defect or in the course of the repairs thereof, and any increase in cost to the City of operating and maintaining a municipal improvement resulting from such failures, defects or damage.
- B. The City's action, or failure to take any action authorized by this agreement, including but not limited to operation or routine maintenance of the improvements prior to acceptance, or surveillance, inspections, review or approval of plans, tests or reports, shall in no way limit the scope of the Developer's warranty.

3.08 Warranty Guaranty.

- A. To secure the Developer's performance of the warranty under Section 3.07, the performance guaranty provided by the Developer under Section 2.02 shall remain in effect until the end of the warranty period, or the Developer shall provide a warranty guaranty by one or more of the methods described in Sections 2.03 through 2.05.
- B. The amount of the warranty guaranty shall be 7.5% of the estimated cost of all improvements calculated pursuant to Section 2.02B.

3.09 City's Remedies under Warranty.

- A. The City shall notify the Developer in writing upon its discovery of any failure or defect covered by the warranty in Section 3.07. Except in case of emergency, the City shall notify the Developer before conducting any tests or inspections to determine the cause of the failure or defect and shall notify the Developer of the results of all such tests and inspections.
- B. The Developer shall correct any failure or defect covered by the warranty within thirty (30) days of receiving notice of the failure or defect from the City. The Developer shall correct the failure or defect at its own expense and to the satisfaction of the City. The city may extend the 30-day period for unusual circumstances including weather.
- C. If the Developer fails to correct the failure or defect within the time allowed by subsection B of this section, the City may correct the failure or defect at the Developer's expense. If the Developer fails to pay the City for the corrective work within thirty (30) days of receiving the City's bill therefor, the City may pursue any remedy provided by law or this agreement to recover the cost of the corrective work, together with interest, costs and reasonable actual attorney's fees.

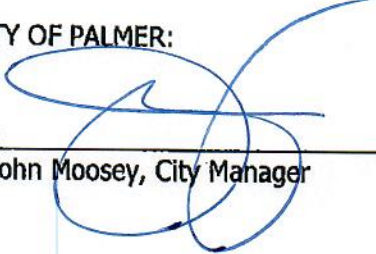
3.10 Completion of Performance: Release of Warranty.

- A. The City shall inspect the improvements at or before the end of the warranty period, and before releasing any performance guaranty or warranty guaranty then in effect. The Developer shall correct any failure or defect in the work revealed by the inspection as required by Section 3.09.
- B. On the Developer's apparent satisfactory performance of all its obligations under this agreement, the City shall execute a written statement acknowledging such performance and shall release any remaining security posted by the Developer under this agreement.

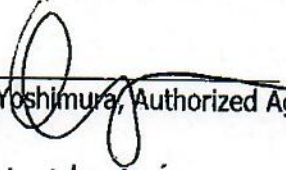
The Developer is posting a performance guaranty under this Subdivision.

IN WITNESS WHEREOF, the parties hereto have set their hands on the date first set forth above.

CITY OF PALMER:

By: 
John Moosey, City Manager

DEVELOPER: Cedar Park Properties, LLC

By: 
[Connie Yoshimura, Authorized Agent]

By: Connie Yoshimura
[Name and title] Managing Member

GUARANTY

In consideration of the City's signing the above Subdivision Agreement, _____, jointly and severally, guaranty performance of _____, the Developer, and consent to and agree to remain bound by any changes in the terms and conditions of the Subdivision Agreement.

GUARANTORS:

Date: _____

[Name], Individually

Date: _____

[Name], Individually

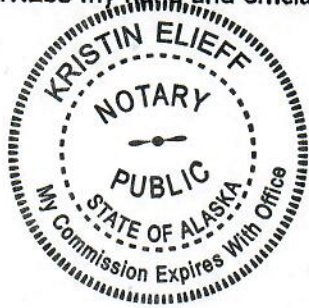
ACKNOWLEDGMENTS FOR SUBDIVISION AGREEMENT

City's Acknowledgment

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

The foregoing Subdivision Agreement was acknowledged before me this 18th day of March, 2022, by John Moosey, City Manager of the City of Palmer, Alaska, a municipal corporation organized and existing by virtue of the laws of the State of Alaska, for the City.

WITNESS my hand and official seal the day and year last above written,



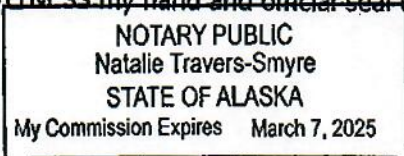
Kristin Elieff
Notary Public in and for Alaska
My Commission Expires: w/this office

Developer's Acknowledgment

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 17th day of March, 2022, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared Connie Yoshimura who is known to me to be Manager Member of Cedar Park Properties, a limited liability Co organized and existing by virtue of the laws of the State of Alaska which is named in the foregoing Subdivision Agreement and he acknowledged to me the execution thereof to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he was fully authorized to execute said instrument.

WITNESS my hand and official seal the day and year last above written,



Natalie Travers-Smyre
Notary Public in and for Alaska
My Commission Expires: 3/7/25